

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN ASSEMBLY MAY 15, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2196**

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**Introduced by Assembly Members Chesbro and Gatto  
(Coauthor: Assembly Member Skinner)**

February 23, 2012

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An act to amend Section 25741 of the Public Resources Code, and to add Section 399.12.6 to the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2196, as amended, Chesbro. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing boards. The existing California Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The specified minimum quantities of electricity products are based upon a percentage of the utility's total retail sales of electricity in California.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to (1) certify eligible

renewable energy resources, (2) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (3) establish a system for tracking and verifying renewable energy credits (RECs) that verifies the generation and delivery of electricity associated with RECs, and (4) certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility.

Under existing law the Energy Commission administers the Renewable Energy Resources Program (RER program) with the near-term objective of increasing the quantity of electricity generated by renewable electrical generation facilities, as defined, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents, and with the long-term goal of obtaining a fully competitive and self-sustaining supply of electricity generated from renewable resources.

Under existing law, the RPS program's definition of an eligible renewable energy resource incorporates, by reference, the RER program's definition of a renewable electrical generation facility.

This bill would amend the RER program's definition of a renewable electrical generation facility to provide that if the RPS program eligibility of a facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, shall meet certain conditions, as specified.

This bill would impose certain requirements with respect to the eligibility of biomethane under the RPS program. The bill would specify that *certain* biomethane procurement contracts executed *by a retail seller or local publicly owned electric utility* prior to ~~January 1, March 29, 2012~~, and not subsequently modified, count in full toward the RPS program's procurement requirements *under the rules applicable to renewable energy resources contracts executed prior to June 1, 2010, if specified conditions are met*. The bill would, with respect to contracts executed prior to ~~January 1, March 29, 2012~~, but subsequently *extended or modified*, as specified, and *with respect to* contracts executed after that date, impose certain requirements ~~with respect to governing~~ the capture, transportation, and use of biomethane, as specified. With respect to biomethane that is used by an onsite generating facility, and biomethane that is used offsite and delivered to the generating facility through a dedicated pipeline, the bill would specify that the use of that

biomethane counts towards the RPS program's procurement requirements if that use satisfies all applicable requirements established by the Energy Commission. With respect to biomethane that is delivered to a generating facility through a common carrier pipeline, the bill would, among other things, require: (1) the biomethane to be injected into a common carrier pipeline that physically flows within California or toward the eligible generating facility; (2) sufficient renewable and environmental attributes of biomethane production and capture to be transferred to the retail seller or local publicly owned utility that uses that biomethane to ensure that any electric generation using the biomethane is carbon neutral, and that those attributes be retired, and not sold, as specified; and (3) the source of biomethane to demonstrate that the reduction in emissions through capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California that is associated with the emission of odors.

The bill would also prohibit specified parties to a biomethane procurement contract from making representations asserting that the procurement contract results in greenhouse gas reductions, as specified, unless the environmental attributes associated with the biomethane are transferred to the purchaser, as specified.

This bill would become operative only if this bill and AB 1900 of the 2011–12 Regular Session are both enacted and become effective on or before January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25741 of the Public Resources Code is  
2 amended to read:  
3 25741. As used in this chapter, the following terms have the  
4 following meaning:  
5 (a) "Renewable electrical generation facility" means a facility  
6 that meets all of the following criteria:  
7 (1) The facility uses biomass, solar thermal, photovoltaic, wind,  
8 geothermal, fuel cells using renewable fuels, small hydroelectric  
9 generation of 30 megawatts or less, digester gas, municipal solid  
10 waste conversion, landfill gas, ocean wave, ocean thermal, or tidal

1 current, and any additions or enhancements to the facility using  
2 that technology.

3 (2) The facility satisfies one of the following requirements:

4 (A) The facility is located in the state or near the border of the  
5 state with the first point of connection to the transmission network  
6 of a balancing authority area primarily located within the state.  
7 For purposes of this subparagraph, “balancing authority area” has  
8 the same meaning as defined in Section 399.12 of the Public  
9 Utilities Code.

10 (B) The facility has its first point of interconnection to the  
11 transmission network outside the state, within the Western  
12 Electricity Coordinating Council (WECC) service area, and  
13 satisfies all of the following requirements:

14 (i) It commences initial commercial operation after January 1,  
15 2005.

16 (ii) It will not cause or contribute to any violation of a California  
17 environmental quality standard or requirement.

18 (iii) It participates in the accounting system to verify compliance  
19 with the renewables portfolio standard once established by the  
20 commission pursuant to subdivision (b) of Section 399.25 of the  
21 Public Utilities Code.

22 (C) The facility meets the requirements of clauses (ii) and (iii)  
23 in subparagraph (B), but does not meet the requirements of clause  
24 (i) of subparagraph (B) because it commenced initial operation  
25 prior to January 1, 2005, if the facility satisfies either of the  
26 following requirements:

27 (i) The electricity is from incremental generation resulting from  
28 expansion or repowering of the facility.

29 (ii) Electricity generated by the facility was procured by a retail  
30 seller or local publicly owned electric utility as of January 1, 2010.

31 (3) If the facility is outside the United States, it is developed  
32 and operated in a manner that is as protective of the environment  
33 as a similar facility located in the state.

34 (4) If eligibility of the facility is based on the use of landfill gas,  
35 digester gas, or another renewable fuel delivered to the facility  
36 through a common carrier pipeline, the transaction for the  
37 procurement of that fuel, including the source of the fuel and  
38 delivery method, satisfies the requirements of Section 399.12.6 of  
39 the Public Utilities Code and is verified pursuant to the accounting  
40 system established by the commission pursuant to 399.25 of the

1 Public Utilities Code, or a comparable system, as determined by  
2 the commission.

3 (b) “Municipal solid waste conversion,” as used in subdivision  
4 (a), means a technology that uses a noncombustion thermal process  
5 to convert solid waste to a clean-burning fuel for the purpose of  
6 generating electricity, and that meets all of the following criteria:

7 (1) The technology does not use air or oxygen in the conversion  
8 process, except ambient air to maintain temperature control.

9 (2) The technology produces no discharges of air contaminants  
10 or emissions, including greenhouse gases as defined in Section  
11 38505 of the Health and Safety Code.

12 (3) The technology produces no discharges to surface or  
13 groundwaters of the state.

14 (4) The technology produces no hazardous wastes.

15 (5) To the maximum extent feasible, the technology removes  
16 all recyclable materials and marketable green waste compostable  
17 materials from the solid waste stream prior to the conversion  
18 process and the owner or operator of the facility certifies that those  
19 materials will be recycled or composted.

20 (6) The facility at which the technology is used is in compliance  
21 with all applicable laws, regulations, and ordinances.

22 (7) The technology meets any other conditions established by  
23 the commission.

24 (8) The facility certifies that any local agency sending solid  
25 waste to the facility diverted at least 30 percent of all solid waste  
26 it collects through solid waste reduction, recycling, and  
27 composting. For purposes of this paragraph, “local agency” means  
28 any city, county, or special district, or subdivision thereof, which  
29 is authorized to provide solid waste handling services.

30 (c) “Renewable energy public goods charge” means that portion  
31 of the nonbypassable system benefits charge required to be  
32 collected to fund renewable energy pursuant to the Reliable Electric  
33 Service Investments Act (Article 15 (commencing with Section  
34 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities  
35 Code).

36 (d) “Report” means the report entitled “Investing in Renewable  
37 Electricity Generation in California” (June 2001, Publication  
38 Number P500-00-022) submitted to the Governor and the  
39 Legislature by the commission.

(e) “Retail seller” means a “retail seller” as defined in Section 399.12 of the Public Utilities Code.

SEC. 2. Section 399.12.6 is added to the Public Utilities Code, to read:

399.12.6. (a) Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by *a retail seller or local publicly owned electric utility and reported to the commission or the Energy Commission* prior to ~~January 1, March 29, 2012~~, and otherwise eligible under the rules in place as of the date of contract execution shall be subject to both of the following:

(1) All quantities of biomethane delivered under the terms of the original contract shall count in full toward the procurement requirements established in this article *in the same manner as a renewable energy resources contract originally executed prior to June 1, 2010, pursuant to subdivision (d) of Section 399.16, if the biomethane is produced by a source that is producing biomethane and injecting it into a common carrier pipeline on or before January 1, 2014, and the biomethane source is specifically identified in the original procurement contract. The product content requirements of Section 399.16 shall not apply to any quantities of biomethane associated with contracts executed prior to March 29, 2012.*

(2) Any quantities of biomethane delivered under the terms of a procurement contract that are associated with an extension of the term of the contract, an increased quantity of ~~biomethane~~, *biomethane beyond the base quantity specified in the contract, including any optional quantities that can be exercised at the discretion of the buyer from any source of biomethane identified in the contract* or any change in the source or sources of biomethane specifically identified in the original contract, *or any source not producing biomethane and injecting it into a common carrier pipeline on or before January 1, 2014*, shall count toward the procurement requirements established in this article only as provided in paragraph (b).

(b) For contracts initially executed on or after ~~January 1, March 29, 2012~~, or for quantities of biomethane associated with contract amendments executed after ~~January 1, March 29, 2012~~, the use of biomethane *by a renewable electrical generating facility* shall not qualify as an eligible renewable energy resource unless it satisfies

1 all applicable requirements established by the Energy Commission  
2 and meets any of the following requirements:

3 (1) The biomethane is used by an onsite generating facility.

4 (2) The biomethane is used by an offsite generating facility and  
5 delivered to the generating facility through a dedicated pipeline.

6 (3) The biomethane is delivered to a generating facility through  
7 a common carrier pipeline and meets all of the following  
8 requirements:

9 (A) The source of biomethane injects the biomethane into a  
10 common carrier pipeline that physically flows within California  
11 or toward the eligible generating facility.

12 (B) The source of biomethane did not inject biomethane into a  
13 common carrier pipeline prior to ~~January 1, March 29, 2012~~, or  
14 the source commenced injection of sufficient incremental quantities  
15 of biomethane after ~~January 1, March 29, 2012~~, to satisfy the  
16 contract requirements.

17 (C) Sufficient renewable and environmental attributes of  
18 biomethane production and capture are transferred to the retail  
19 seller or local publicly owned electric utility that uses that  
20 biomethane to ensure that any electric generation using the  
21 biomethane is carbon neutral. For any biomethane credited towards  
22 the ~~renewable~~ *renewables* portfolio standard obligations established  
23 pursuant to this article, these attributes shall be retired and shall  
24 not be resold.

25 (D) All sellers and purchasers of biomethane comply with a  
26 system for tracking and verifying the use of biomethane, as  
27 established by the Energy Commission, that is equivalent to the  
28 system provided in subdivision (c) of Section 399.25.

29 (E) The source of biomethane demonstrates that the reduction  
30 in emissions through capture and injection of biomethane causes  
31 a direct reduction of air or water pollution in California or alleviates  
32 a local nuisance within California that is associated with the  
33 emission of odors.

34 (c) For contracts initially executed on or after ~~January 1, March~~  
35 ~~29, 2012~~, or for quantities *of biomethane* associated with contract  
36 amendments executed after ~~January 1, March 29, 2012~~, the use of  
37 biomethane shall be assigned to the appropriate portfolio content  
38 category based on the application of the criteria in subdivision (b)  
39 of Section 399.16 to the procurement of electricity by the retail

1 seller or local publicly owned electric utility from the electric  
2 *renewable electrical* generating facility consuming the biomethane.

3 (d) A retail seller, local publicly owned electric utility, or an  
4 intermediary party to a biomethane procurement contract shall not  
5 make a marketing, regulatory, or retail claim that asserts that a  
6 biomethane procurement contract to which that entity was a party  
7 resulted, or will result, in greenhouse gas reductions, unless the  
8 environmental attributes associated with the production and capture  
9 of the biomethane pursuant to that contract are transferred to the  
10 retail seller or publicly owned electric utility that purchased that  
11 biomethane and retired on behalf of the retail customers consuming  
12 the electricity associated with the use of that biomethane.

13 (e) For the purposes of this section, “biomethane” means landfill  
14 gas or digester gas, consistent with Section 25741 of the Public  
15 Resources Code.

16 (f) If any provision of this section or the application of any  
17 provision of this section is held invalid, biomethane delivered  
18 through a common carrier pipeline pursuant to a contract executed  
19 within 180 days of, or at any time subsequent to, the invalidation  
20 of that provision shall not qualify as an eligible renewable energy  
21 resource.

22 SEC. 3. This act shall become operative only if this act and  
23 Assembly Bill 1900 of the 2011–12 Regular Session are both  
24 enacted and become effective before January 1, 2013.